

Such intermeddling in cases of intestacy will make the party executor *de son tort*, though it be done by the direction of the intestate himself; as if A., the servant of B., sells the goods of C., an intestate, as well after his death as before, though by the orders of C., and pay the money arising therefrom into the hands of B., B. may be sued as an executor *de son tort*, Padget v. Priest, 2 T. R. 97. And though a party cannot be so charged while he acts under a power of attorney made to him by one of several executors who has proved the will, yet if he continue to act after the death of such executor, he may be charged as executor *de son tort*, though he act under the advice of another of the executors who has not proved, Cottle v. Aldrich, 4 M. & S. 175.² As to the effect of a confirmation of such an agent's acts by a party afterwards taking out administration, see Foster v. Bates, 12 M. & W. 226,³ it being no objection upon ratification of his acts, that his principal was unknown to the agent at the time, but see Sharland v. Mildon, 5 Hare, 469. But one who knowingly receives a chattel from an executor *de son tort*, and deals with it as his own, does not himself thereby become executor *de son tort*, unless in case of collusion; and it was so held, where the widow of an intestate possessed herself of a lease, part of his estate, without taking out administration, and handed it to another who kept it and occupied the premises for the rest of the term with the landlord's consent, Paull v. Simpson, 9 Q. B. 365;⁴ it *seems, **430** however, that he may possibly be sued in equity, Salmon v. Clagett, 3 Bl. 125;⁵ Hill v. Curtis, 1 L. R. Eq. 90. And if one claim goods under a colour of legal title, as by virtue of a lien, he is not liable as executor *de son tort*, though he fail to prove title completely, Feming v. Jarratt, 1 Esp. 336.⁶

² A person who deals with the goods of a testator as an agent of the executor cannot be treated as an executor *de son tort* whether the will has been proved or not. Sykes v. Sykes, L. R. 5 C. P. 113.

³ Where a person who was not the personal representative of an intestate assumed to collect money belonging to her estate, an administratrix afterwards appointed has the right to affirm or disaffirm such act and by affirming it to treat such person as receiving the money to the use of the administratrix. Dempsey v. McNabb, 73 Md. 433.

⁴ But see Williams v. Heales, L. R. 9 C. P. 177.

⁵ An executor *de son tort* may be sued either at law or in equity. Baumgartner v. Haas, 68 Md. 36. In England the cases are conflicting as to whether a suit for administration in equity of the estate of a decedent will lie against an executor *de son tort*, Rayner v. Koehler, L. R. 14 Eq. 262; Cary v. Hills, L. R. 15 Eq. 79; Coote v. Whittington, L. R. 16 Eq. 534; Rowsell v. Morris, L. R. 17 Eq. 20; *In re Lovett*, 3 Ch. D. 198.

⁶ There must be colorable ground for his claim and good faith in its assertion. In Baumgartner v. Haas, 68 Md. 32, an absolute bill of sale was given as security for a debt. On the death of the grantor the grantee took possession of the property and endeavored to prevent the other creditors of the grantor from seeing it. Furthermore his answer to a bill filed by a creditor assailing the transfer was evasive as to whether he claimed the bill of sale to be an absolute conveyance or a mortgage. It